IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2860 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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RANA ASHOK VADILAL - Petitioner
Versus
CHIEF OFFICER & 6 - Respondent

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Appearance :
MR RV DESAI for Petitioner.
NOTICE SERVED for Respondent.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 02/02/2006

ORAL JUDGMENT

1.The petitioner has filed this petition under Article 226 of the Constitution of India praying for the direction to the respondent to make the petitioner permanent at the first available opportunity and to release all the benefits attached to the post of permanent workman. The petitioner has also prayed for the direction to the respondent to reinstate the petitioner in service on any terms to the respondent in accordance with law and as per the seniority list, in case of necessity.

2.It is the case of the petitioner that the petitioner has been rendering his services to the respondent Nagarpalika w.e.f. September, 1988 as Helper initially in the garden and thereafter, in the various departments of the Nagarpalika at the instance of Chief Officer of Nagarpalika. The petitioner has put up 240

days of service in each year right from the commencement of his joining the services with respondent Nagarpalika. The petitioner has requested the respondent Nagarpalika on number of occasions to make him permanent and to release the benefits attached to the post of permanent workman. The petitioner has also served a demand notice vide his letter dated 25.02.1997. The petitioner thereafter filed Regular Civil Suit No. 918 of 1997. After service of the demand notice, the respondent Nagarpalika, instead of taking positive approach in the matter, had terminated the service of the petitioner w.e.f. 27.03.1998. The petitioner has, therefore, filed the present petition before this Court.

3.Mr. R.V. Desai, learned advocate appearing for the petitioner has submitted that the petitioner has served the demand notice on 25.02.1997. However, no action was taken

thereon and hence, the petitioner has filed complaint on 27.05.1998. The decision on the said complaint is not taken and hence, the present petition was filed. There is no other remedy available to the petitioner for seeking appropriate relief. The petitioner has put on the services of more than 10 years and hence , the petitioner was entitled to be absorbed on permanent post in the respondent Nagarpalika. He has further submitted that though there was vacancy, the respondent Nagarpalika has not made the petitioner permanent and has encouraged unfair labour practice and it is in violation of the various judgments passed by this Court as well as Hon'ble Supreme Court. He has further submitted that under the provisions of Gujarat Industrial Disputes Rules, it is incumbent upon the respondent to maintain seniority list of workmen and also to observe the procedure laid down in Rule 81 with regard to maintainance of seniority list of

workmen.

4.In support of his submission, he relied on the decision of the Hon'ble Supreme Court in the case of *Gujarat Agricultural University V/s. Rathod Labhu Bechar and Ors., 2001 (1) G.L.H. 465* wherein it is observed that taking work, from daily wage worker or ad hoc appointee is always viewed to be only for a short period or as a stop-gap arrangement. The Court has further observed that there is no justification to keep such persons hanging as daily-rated workers. In such situation a legal obligation is cast on an employer if there be vacant post to fill it up with such workers in accordance with Rules, if any, and wherever necessary, by relaxing the qualifications, where long experience could be equitable with such qualifications. If no post exists then duty is cast to assess the quantum of such work and create such equivalent post for their

absorption.

5.On behalf of the respondent Nagarpalika, Tax Superintendent has filed affidavit-in-reply wherein it is stated that the petitioner has efficacious remedy available by way of approaching the Labour Court by raising industrial dispute under the Industrial Disputes Act. It is further stated therein that the petitioner was appointed as daily wager in the garden and as and when the work was available, he was offered work. At the relevant time, when the petitioner was appointed as daily wager, no selection procedure as required to be followed was followed and without following any procedure, the petitioner was appointed as daily wager. Simply because the petitioner has worked for more than 240 days in a year, the petitioner is not entitled to regularization of service and to be appointed as permanent employee. As and

when the sanctioned post has became vacant, the said post is required to be filled after following due procedure of selection. In 1998, one post of Helper/Peon was vacant in the garden department where the petitioner was working and further as per the backlog and the roster, the said post was required to be filled in from the candidates belonging to Schedule Tribe community and accordingly after following due procedure of selection, candidate belonging to schedule tribe community has been appointed. In fact, the respondent Nagarpalika is maintaining seniority list of the workmen who are working on daily wages basis and as and when the work was available daily wagers are appointed and continued. Simply because the petitioner was working as daily wager for long period does not entitle him to be appointed as permanent employee and for the purpose of appointment on the permanent post, selection procedure is required to be followed. Lastly,

it is stated that the petitioner was working even on that day as daily wager and as and when the work was available, he was offered work. The petitioner was in fact continued as daily wager and offered work looking to the availability of the work. It is, therefore, stated that the prayer made in the present petition cannot be granted.

6.After having heard learned advocate appearing for the petitioner and after having gone through the affidavit-in-reply filed by the Nagarpalika, the Court is of the view that the petitioner has filed the present petition instead of approaching the Labour Court who can take proper view, after appreciation of evidence. The Court has found that the petitioner has filed complaint on 27.03.1998 and without waiting for the outcome of the said complaint, straightway the present petition is filed on 31st March, 1998. The Court has also

found that before filing the present petition, the petitioner has filed Civil Suit No. 918 of 1997 praying for similar relief. Though the interim injunction prayed for in the said suit was rejected in January 1998, the petitioner has not disclosed the said fact while filing the present petition on 31.03.1998. Even otherwise, once the civil suit is filed, the present petition cannot be entertained. It is not clear from the record as to whether the said suit is still pending or disposed of.

7. With regard to the merits of the matter, the Court is of the view that simply because the petitioner is a daily wager, as a matter of right, the petitioner cannot ask for appointment as permanent worker in the respondent Nagarpalika. It is not clear from the pleadings made in the petition as to whether after the termination of the service of the petitioner on 27.03.1998, the petitioner

was again entrusted the work of daily wager. However, a statement was made in the affidavit-in-reply that the petitioner was working as a daily wager and possibly on that basis, this Court has passed an interim order on 16.10.1999 and the respondent Nagarpalika was directed to pay all the outstanding wages of the petitioner, if any.

8. The question regarding grant of relief or issuance of direction to the local authorities to make the daily wagers or adhoc workers permanent has come up before the Full Bench of this Court in the case of *Amreli Municipality V/s. Gujarat Pradesh Municipal Employees Union, 2004 (2) G.L.H. 692* and this Court has laid down certain guidelines in para 12.1 of the judgment. It reads as under :-

After considering the decisions cited before us, the following principles emerge :

(A) No regularization or permanency can be effected *dehors* the statutory provisions or the guidelines.

(B) Long service put in by the workmen itself may not be a ground to regularize services of ad hoc/temporary workmen against the sanctioned set-up without following statutory procedure of recruitment. At the most, Labour Court /Industrial Tribunal can issue direction for consideration of absorption subject to availability of posts on the establishment.

(C) To avoid Nepotism and corruption, no backdoor entry in service;

(D) Financial capacity of the local body to have additional burden is a relevant consideration to be kept in mind while ordering regularization or absorption.

9.Having considered the aforesaid principles laid down by this Court, the petitioner's prayer for permanency cannot be effected *dehors* the statutory provisions or the guidelines. Simply because the petitioner has put on more than 10 years service, it cannot be a ground for regularization of his services. However, looking to the fact that the petitioner has alleged to have rendered continuous service as

daily wager, his services as daily wager may not be terminated without due process of law and the respondent Nagarpalika may see to it that no unqualified workmen is appointed in his place and his name for regularization be considered provided he is eligible on the sanctioned post. If the post is not sanctioned, the respondent authorities may take such steps which are necessary in accordance with the provisions of law/rules/circulars within the budgetary provisions.

10. Subject to the aforesaid observation, the petition is disposed of accordingly. Rule discharged without any order as to costs. Interim relief, if any, stands vacated.

[K.A. PUJ, J.]

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